

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIE SMITH,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants.

20-CV-9501 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

Plaintiff Willie Smith brings this action under 42 U.S.C. § 1983 against the New York City Department of Correction; the Commissioner of the New York City Department of Correction, Cynthia Brann; “Health Director Commissioner” Patsy Yang; and Board of Correction Executive Director Margaret Egan. Plaintiff alleges that Defendants are violating his federal constitutional rights by not protecting him from contracting COVID-19. On February 10, 2021, Plaintiff was granted leave to file a second amended complaint within 60 days by the Honorable Magistrate Judge Aaron. Dkt. 13. Plaintiff did not do so. Before the Court is the August 13, 2021 Report and Recommendation of Judge Aaron (the “Report”), which recommends dismissing the action without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 14(b). *See* Dkt. 14. None of the parties filed objections to the Report.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Parties may object to a magistrate judge’s recommended findings “[w]ithin 14 days after being served with a copy of the recommended disposition.” Fed. R. Civ. P. 72(b)(2); *see also* Report at 5–6 (advising parties of deadline to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)). “When

the parties make no objections to the Report, the Court may adopt the Report if ‘there is no clear error on the face of the record.’” *Smith v. Corizon Health Servs.*, No. 14-CV-8839 (GBD) (SN), 2015 WL 6123563, at *1 (S.D.N.Y. Oct. 16, 2015) (*quoting Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005)). “Furthermore, if as here . . . the magistrate judge’s report states that failure to object will preclude appellate review and no objection is made within the allotted time, then the failure to object generally operates as a waiver of the right to appellate review.” *Hamilton v. Mount Sinai Hosp.*, 331 F. App’x 874, 875 (2d Cir. 2009) (citations omitted).

As no objections to Judge Aaron’s Report were filed, the Court reviews the Report for clear error. After careful consideration of the record, the Court finds no error and thus adopts the thorough and well-reasoned Report in its entirety. Accordingly, Plaintiff’s complaint is dismissed without prejudice for failure to prosecute.

The Clerk of Court is respectfully directed to terminate this case and to mail a copy of this order to Plaintiff.

SO ORDERED.

Dated: November 8, 2021
New York, New York



RONNIE ABRAMS
United States District Judge